

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE  
BOROUGH OF OLD TAPPAN,

Petitioner,

-and-

Docket No. SN-80-10

OLD TAPPAN TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations determination, the Commission holds that the number of days of work for teachers in excess of the 180 days required for the receipt of state aid is a mandatorily negotiable term and condition of employment. While recognizing the right of the Board of Education to establish the school calendar to meet the 180 day requirement, the Commission determines that days in excess of that figure relates to teachers' work year and does not significantly interfere with the accomplishment of the Board's educational responsibilities. Therefore, negotiations regarding teacher work days in excess of 180 are required.

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Appearances:

For the Petitioner, Joseph R. Letcher, Esq.

For the Respondent, Goldberg and Simon, P.A.  
(Mr. Theodore M. Simon, On the Brief)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission on August 10, 1979 by the Board of Education of the Borough of Old Tappan (the "Board") alleging that a dispute existed as to negotiability and arbitrability of a certain matter that the Old Tappan Teachers Association (the "Association") sought to submit to binding arbitration pursuant to a negotiated grievance procedure.

The Board, in its petition, maintains that the dispute relates to the adoption of the school calendar for the 1979-80 school year and to a grievance filed by the Association allegedly attempting to challenge the adoption of that calendar. The Board seeks a permanent restraint of arbitration for two reasons. First, it asserts that the dispute relates to a non-negotiable, and therefore non-arbitrable, matter of educational policy within the Board's

exclusive managerial prerogative. Second, it claims the Association filed the grievance in an untimely fashion.

The facts in this matter are not in dispute. On January 10, 1979, the Board unilaterally adopted its school calendar for the 1979-80 school year which apparently provided for 185 days of student attendance.<sup>1/</sup> The Association contends, and the Board does not dispute, that the Board had, in the past, a practice that all days in excess of 180 would be dropped at the end of the school year if they were not needed to make up for school days lost to inclement weather or other emergencies. Apparently, the Board, for the 1979-80 school year removed that provision from the calendar and set the year at 185 days.

Subsequent to the filing of this Petition, both parties submitted briefs and statements of position, the last of which was received on September 24, 1979. The Board argued that this was a school calendar issue and was, therefore, non-negotiable. The Association, however, argued that the true issue in this case involved a unilateral increase in teachers' work year. The Association cited both Commission and judicial decisions in support of its contention that although the Board may fix the scheduling of school days required for receipt of state aid to meet the 180 day number, any work days for teachers in excess of that minimum

<sup>1/</sup> There is some question whether the Board fixed the school year at 183 or 185 school days. Letters from Association Grievance Chairman Phelan dated March 19 and May 2, 1979, refer to 185 days, but the Association's brief refers to 183 days. For the purpose of deciding this scope of negotiations dispute, the difference between 185 and 183 days is of no legal consequence.

must be negotiated. The Association indicated that it is not challenging the managerial prerogative of the Board to establish the 180 day school calendar, but is seeking its right to negotiate concerning the increase in the number of work days in the year in excess of 180 days.

The Board, as previously stated, has given two reasons to support its request for a restraint of the arbitration. With regard to a claim that the grievance was untimely, the Commission has stated on numerous occasions that the scope of negotiations procedure is not the proper forum to raise such issues. In In re Hillside Board of Education, P.E.R.C. No. 76-11, pp 9-11, 1 NJPER 55, 57 (1975), the Commission defined the purpose of a scope proceeding as that process used to determine whether the subject matter in dispute is within the scope of collective negotiations. We held that arguments based upon the contractual arbitrability of the controversy should be directed to the arbitrator or the courts. The Board's request for a restraint of arbitration based upon the timeliness of the grievance is therefore misplaced. That issue must be raised in the appropriate forum. This approach has been explicitly approved by the Supreme Court. See Ridgefield Park Ed. v. Ridgefield Park Bd of Ed, 78 N.J. 144 at 153-156 (1978).

With regard to the scope of negotiations issue, the Board's unilateral action in establishing the number of days in the school year at 185, the Commission is again confronted by the potential conflict between a board of education's non-negotiable educational judgment on the academic calendar for students and

the teachers' right to negotiate the terms and conditions of employment concerning the number of days of work in their work year. In dealing with this problem in the past, the Commission, relying on the Supreme Court's decision in Burlington County College Faculty Assn v. Board of Trustees, 64 N.J. 10 (1973), has stated:

While the adoption of a school calendar will fix the number of days when schools are open and the number of days that students are required to be present it will not in itself fix the number of working days of the teachers. Negotiations on that term and condition of employment are, of necessity, to be conducted in light of the establishment of a school calendar, but its adoption does not preclude meaningful negotiations on the number of teacher working days.

(emphasis added)

In re Greenbrook Township Board of Education, P.E.R.C. No. 77-11, 2 NJPER 288 (1976) 2/

A later case, In re Edison Twp Board of Education, P.E.R.C. No. 78-53, 4 NJPER 151 (¶4070 91978) raised this potential conflict between the school calendar and teacher work year in a situation where the 180 day minimum school year was threatened. In Edison an unusually high number of school days had been cancelled due to inclement weather and the school board determined that it had to change several days previously scheduled as part of the Easter holidays to school days for teachers and students in order to insure that the 180 day minimum would be met. The teachers argued that the issue involved was scheduling of work days and work year, while the Board argued that the issue was school calendar. The Commission held that since the board's action did not add an additional

2/ See also In re Board of Education of Boro of Ridgefield, P.E.R.C. No. 77-9, 2 NJPER 284 (1976) which is somewhat analogous to the instant case in that it involved an increase in the teachers' work year from 183 days to 185 days. In that case no question was presented as to whether this also involved an increase in the number of days of school for students.

number of work days but rather made up a sufficient number of days to meet the 180 day requirement the decision was non-negotiable. We stated:

Thus, the areas of mandatory negotiability of teacher work year must be limited to those days of attendance of students scheduled by the Board to meet their required educational responsibilities. Those days of the academic calendar which are scheduled by the Board to meet the 180 day requirement of student instruction are not within the scope of mandatory negotiations even though they obviously define the bulk of the work year of the teachers.  
4 NJPER at 152. (footnotes omitted)

This case now confronts us with a question not clearly answered by these earlier decisions, that is whether teacher work days in excess of 180 days in the school year are mandatorily negotiable even if those days are also days of student attendance.<sup>3/</sup> Applying our previous holdings as discussed above, and the holdings of the Supreme Court in Ridgefield Park Board of Education v. Ridgefield Park Education Assn, 78 N.J. 144 (1978) and State of New Jersey v. State Supervisory Employees Assn, 78 N.J. 59 (1978) as well as Burlington County College Faculty Assn, supra, we determine that this subject is a mandatorily negotiable term and condition of employment.

It is now established that the State requires that each school district must be open for pupil attendance a minimum of 180 days per school year.<sup>4/</sup> Therefore, pursuant to State v.

<sup>3/</sup> In re Board of Education of Boro of Ridgefield, supra, note 2, holds that they are mandatorily negotiable if they are scheduled only as days of teacher attendance such as days just prior to or after the end of the students' school year.

<sup>4/</sup> See Formal Opinion No. 19-1975. N.J. Attorney General, August 14, 1975.

State Supervisory Employees Assn, supra, a proposal by the employee organizations for less than 180 days in a teachers' work year would violate the State requirement. Therefore, regardless of whether work year is a term and condition of employment, it is not mandatorily negotiable as it violates a State requirement. Similarly, the 180 days figure constitutes the figure established by the State as the number of days of instruction per year required to meet the educational responsibilities of a school board to its students. Therefore a proposal by the teacher for less than 180 days of work by them might also significantly interfere with the accomplishment of this educational policy objective, and would therefore not be a term and condition of employment under the test established by Dunellen Board of Education v. Dunellen Education Assn, 64 N.J. 17 (1973) and reiterated by Ridgefield Park, supra.

However, negotiations on the number of days of work in the teachers' work year above 180 violates neither of these tests. As previously discussed, it does directly concern a term and condition of employment, length of work year, and it does so without significantly interfering with a board's educational policy responsibilities. The State's requirement has been met so even agreement to a teacher proposal of 180 days would not violate the legal directive.<sup>5/</sup> Nor would it significantly interfere with educational

<sup>5/</sup> As always it must be emphasized that finding the subject to be mandatorily negotiable in no way obligates a board to agree to the teachers' proposal. If a board feels 185 days of instruction is better it can steadfastly adhere to this position. See State of N.J. v. Council of N.J. State College Locals, 141 N.J. Super. 470 (App. Div. 1976).

policy as the State has already determined that 180 days provides an educationally satisfactory school year.

Therefore we find, that once the 180 day school year for students has been achieved, proposals directed only at the teachers' work year are mandatorily negotiable. Agreement on teachers' proposals in this area will influence a board's ability to keep schools open for students beyond 180 days but, as indicated, we do not believe this presents a significant interference with educational policy.<sup>6/</sup> The bulk of the school year is totally in the control of the board.

We find, after reviewing the request for submission of a panel of arbitrators and the correspondence from the Association to the Board regarding this matter, that the gravamen of the grievance relates to an increase in the work year and not to the Board's establishment of a school calendar to meet the 180 day requirement, that the Association is not challenging the Board's managerial prerogative to fix the basic, required school calendar, but is seeking merely to negotiate concerning any increase in the work year beyond the 180 days required.

<sup>6/</sup> Boards could still have more days of pupil attendance than that established for teachers, by arranging scheduling appropriately or by negotiating some additional compensation or benefit for days worked in excess of the minimum number of days agreed to for teachers.

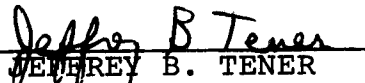


ORDER

For the foregoing reasons and under the facts of this case, IT IS HEREBY ORDERED that the subject matter of the within dispute between the parties may proceed to arbitration if otherwise arbitrable under the terms of their collective negotiations agreement. The request of the Board for a permanent restraint of arbitration is hereby denied.

BY ORDER OF THE COMMISSION

BY

  
JEFFREY B. TENER  
Chairman

Chairman Tener, Commissioners Graves, Hartnett and Parcells voted for this decision. None opposed. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey

December 4, 1979

ISSUED: December 5, 1979